

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF MENTAL HEALTH

Petitioner,

v.

COATES & LANE ENTERPRISES, INC.
Respondent

Case No.: I-02-90018

FINAL ORDER

I. Introduction

On September 24, 2002, the Government served a Notice of Infraction upon Respondent Coates & Lane Enterprises, Inc. alleging that it violated 22 DCMR 3836.4, which requires a supported rehabilitative residence to maintain a staff to resident ratio of at least 2:8 during peak hours. The Notice of Infraction charged that the violation occurred at 1209 6th Street, N.E., on September 24, 2002, at 7:20 AM. The Government sought a fine of \$500.

Respondent filed an answer with a plea of Deny, and I held an evidentiary hearing on November 22, 2002. Lynn Riggins, the Director of the Division of Licensure of the Department of Mental Health, appeared on behalf of the Government, and Nicole Coates, Respondent's Director of Residential Services, appeared on its behalf. At the hearing, Respondent moved to change its plea to Admit with Explanation, and I granted that motion.

II. Summary of the Evidence

Ms. Coates admitted that only one staff member was on duty at the residence at issue on the morning of September 24, 2002. She testified that another staff member was assigned to work there beginning at 6:00 AM, but that worker had called the facility's residence director at 5:00 AM to say that she could not come to work that day. Ms. Coates testified that this violated Respondent's policy, which requires staff members to give at least 4 hours' notice if they are not coming to work in order to give Respondent time to find a replacement.

Ms. Coates also testified that Respondent maintains a list of available substitute workers, but that the residence director could not contact any of them in time for one of them to be on the job by 7:20 AM, when the inspector visited the facility. Ms. Coates admitted on cross-examination, however, that one of the responsibilities of the residence director is to be available to cover for any staff member who is absent if a replacement is not available. Ms. Coates asserted that the residence director often preferred not to cover for other staff members so that she would be available to take residents of the facility to their various medical appointments in order to ensure that the doctors received accurate information about the residents. Ms. Coates stated that she did not know whether any residents had medical appointments scheduled on September 24, 2002.

III. Findings of Fact

Respondent's plea of Admit with Explanation establishes that, on the morning of September 24, 2002, it did not maintain a staff to resident ratio of 2:8 during a period of peak

activity at its supported rehabilitative residence at 1209 6th Street, N.E.¹ One staff member was on duty that morning, and a second staff member was supposed to begin work at 6:00 AM, but she called the facility's residence director at 5:00 AM to say she would not be coming to work that day. This violated Respondent's employment policies, which require all employees to call in at least four hours before the scheduled start of any shift if they will not be coming to work.

Respondent has instituted two separate procedures to guard against staff shortages caused by employees who do not work their assigned shifts. First, it maintains a list of available workers who can be called to substitute for an unavailable worker. Second, it requires its residence director to substitute for an employee if no one else is available. On this record, there is no adequate explanation for the residence director's failure to substitute for the absent worker, as required by her job description. Respondent speculated that the residence director might have planned to attend a resident's medical appointment, but there is no evidence that any such appointment was scheduled on September 24. Moreover, the violation occurred at 7:20 AM, during the breakfast hour, an unlikely time for a medical appointment. The evidence, therefore, does not explain why the residence director was not present at 7:20, more than two hours after receiving the call from the worker who was not coming to work.

¹ There is no evidence of the number of residents present on the morning of September 24, but Respondent's plea of Admit with Explanation is sufficient to establish that the one staff member who was present was not sufficient to satisfy the 2:8 requirement.

IV. Conclusions of Law

The regulation at issue provides:

Each Supported Rehabilitative Residence shall maintain a staff to resident ratio of 1:8, twenty-four hours (24 hr.) per day whenever a resident is present and 2:8 during periods of peak activity, such as meals and when most residents are home and awake.

22 DCMR 3836.4

Respondent's plea of Admit with Explanation establishes that it violated § 3836.4 on September 24, 2002. Violations of § 3836.4 are Class 2 infractions, punishable by a \$500 fine for a first offense. 16 DCMR 3241.2(t); 16 DCMR 3201. Respondent's explanation does not excuse or mitigate the violation. It employed a residence director, who received the call from the absent worker, and whose job required her to take that worker's place if no other substitute could be found. The record contains no explanation for the residence director's failure to do so. The residents of a supported rehabilitative residence, such as the one operated by Respondent, "require twenty-four hour (24 hr.) staff supervision" 22 DCMR 3836.1. By choosing to operate such a facility, Respondent has accepted the obligation to provide the needed supervision. Its unexplained failure to do so is a serious matter, and outweighs the absence of a history of violations. *See DMH v. HFM Enterprises, Inc.*, OAH No. I-02-90007 at 6-7 (Final Order, November 1, 2001) ("Those who own and operate such facilities owe the highest obligation not only to their consumers, some of our most vulnerable citizens, but to the public at large to be in full compliance with the letter and spirit of the laws regulating those facilities.") Respondent's plea, however, evidences some acceptance of responsibility, and I consequently will reduce the fine slightly. Respondent will be ordered to pay \$425.

V. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2003:

ORDERED, that Respondent shall pay a total of **FOUR HUNDRED TWENTY-FIVE DOLLARS (\$425)** in accordance with the attached instructions within 20 calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondent fails to pay the above amount in full within 20 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondent's licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondent's business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **02/10/03**

John P. Dean
Administrative Judge